

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NOS. K03-R-14, K03-R-15, K03-R-16 and K03-R-17**

**GLENN'S TRUCKING CO., INC. and  
L.H. BURNS & ASSOCIATES, LLC**

**APPELLANT**

**v.**

**ORDER NO. K-19300**

**TRANSPORTATION CABINET  
COMMONWEALTH OF KENTUCKY**

**APPELLEE**

This consolidated appeal was presented to the Kentucky Board of Tax Appeals by hearing before the full board on January 11, 2005. The issue appealed to the Board, as stated in the individual petitions of appeal, challenges the off-road mileage determinations made by the Cabinet for the purpose of calculating taxes and credits, as announced in four Final Rulings on Protest of Tax Assessments.

Prior to taking any testimony the Transportation Cabinet objected to the Appellant presenting any evidence on his appeal for reason that the Appellant had no records from which off road mileage could be calculated as required by statute and that in the absence of such documentation his mere disagreement with the Cabinet's determinations would be insufficient to meet the Appellants burden of proof.

After hearing arguments on this issue the Board permitted the Appellant to proceed to present his case, for the purpose of determining whether the matter would be decided upon new evidence or a challenge to the methodology used by the Cabinet to calculate the assessments.

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By letter the parties had agreed that the Cabinet would review all available records for the period of January 1, 2002 through June 30, 2002 in order to determine the percentage of off-road activity to total miles driven. It was agreed that the “off-road” percentage so computed would be applied to total miles for all quarters in the audit period to determine taxable miles. The Cabinet received some records and in addition actually sent a representative to ride in the trucks with taxpayer’s employees in order to record actual off-road miles driven during this same period.

Because the taxpayer could not produce complete mileage records for its vehicles and equipment, the Cabinet was forced to apply various assumptions with regard to this matter. Also because the taxpayer had historically under reported actual fuel purchased, as determined by the Cabinet’s audit, the Cabinet had to apply assumptions with regard to the total amount of fuel purchased during the protest period by multiplying the reported fuel purchases by a factor consistent with the percentage of under reporting that the taxpayer’s history revealed.

Additionally, the Cabinet had to apply an average miles per gallon consumption rate to the fuel purchased in order to arrive at the total number of miles driven by the taxpayer’s vehicles. This miles per gallon assumption was based upon the auditors experience with fifteen prior fuel tax audits and the average miles per gallon calculations which that experience provided.

The entire thrust of Appellant’s case was a challenge to the findings of the Cabinet with regard to the number of “off-road” miles driven by Appellant’s trucks during the audit period. Appellant did not produce at the hearing any more complete documentation than what had been provided to the Cabinet and considered by it in

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making its Final Rulings. Instead, Appellant challenged the Cabinet's methodology used to calculate the off-road miles driven.

However, after hearing all of Appellant's arguments with regard to its methodology, the Board is not persuaded that the Appellant's method is more accurate than that employed by the Cabinet, or that the methods employed by the Cabinet were arbitrary, or otherwise fatally flawed.

The Appellant thoroughly examined those calculations in the hearing but did not demonstrate that its proposed calculations were more credible. Neither did Appellant sufficiently discredit the calculation made by the Cabinet so as to meet its burden of proof.

**ORDER**

Upon the whole hearing the Board finds that the Cabinet's calculations are reasonable, supported by the ample evidence and/or justifiable inference. NOW THEREFORE , it is hereby ORDERED that the Appellant is not entitled to the relief it seeks and the Final Rulings of the Cabinet are affirmed.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record.

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The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER AND MAILING: April 11, 2005**

**KENTUCKY BOARD OF TAX APPEALS  
FULL BOARD CONCURRING**

**NANCY MITCHELL  
CHAIR**